

County of Gallatin

311 W. Main, Courthouse • Bozeman, Montana 59715

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D.N.R.C.

October 23, 2006

Mary Sexton
Director, Montana Department of Natural Resources & Conservation
1625 Eleventh Ave.
Helena, MT 59620

Re: Gallatin County Commission Petition for Rulemaking for Exempt Wells

Director Sexton,

Please accept the attached petition for a rule change to amend DNRC's definition of "combined appropriation," located at ARM Section 36.12.101(14) and to add to the Administrative Rules, the statutory definition of "tract of record," found at Section 76-3-103 (16), MCA. The purpose of the attached Petition is to address individual wells that are exempt from DNRC review and the subdivision process. As you will see from the attached Petition, the use of exempt wells in major subdivisions is becoming an increasing concern.

The attached Petition is the result of a lengthy public process. The Gallatin Water Resources Task Force, a group representing diverse interests including conservation and the development industry, proposed and drafted the attached Petition. On October After numerous hearings regarding the impact of exempt wells, on October 18, 2006, the Commission voted unanimously to approve the Petition.

Thank you for your consideration. The Commission looks forward to actively participating in the rulemaking process.

Your truly,



John Vincent,
Chair, Gallatin County Commission

gss

Enc

c: Alan English, Gallatin Local Water Quality District

BEFORE THE DEPARTMENT OF
NATURAL RESOURCES AND CONSERVATION
OF THE STATE OF MONTANA

| | | |
|-------------------------------|---|-------------|
| In the matter of amendment of |) | |
| ARM § 36.12.101(14), |) | Petition to |
| definition of |) | Amend Rule |
| combined appropriation |) | |

TO: All Concerned Persons

Petitioner: The Gallatin County Commission

Commissioner Bill Murdock
Commissioner Joe Skinner
Commissioner John Vincent

Gallatin County Courthouse
311 West Main Street, Room 306
Bozeman, Montana 59715-4576
(406) 582-3000

1. Requested Rule Amendments

Amend definition of “combined appropriation,” at ARM § 36.12.101(14); and, add the statutory definition of “tract of record” to DNRC’s regulatory definitions.

2. Proposed Rule Amendments

ARM § 36.12.101(14) “Combined appropriation” requiring a permit means an ~~appropriation of water from the same source aquifer by two or more groundwater developments, that are physically manifold into the same system.~~ an appropriation of ground water from the same source by:

(a) a second or any subsequent well, drilled after [the effective date of this rule], on a tract of record in existence on [the effective date of this rule] that together with all wells on that tract exceed the flow rate or volume limitations of 85-2-306(3)(a), MCA;
or,

(b) any well on a tract of record, which is created by subdivision after [the effective date of this rule] and is subject to review under Title 76, Chapter 4, MCA;

(c) except that a ground water appropriation for use by livestock only is not considered to be part of a combined appropriation.

The phrase, “combined appropriation,” appears in MCA § 85-2-306(3)(a). This section of the Montana Water Code states that an individual, small well does not need to go through DNRC water rights permitting (i.e., is exempt from permitting, or is an “exempt well”). This section, however, also says that if a small well is part of a “combined appropriation” it *does* have to go through DNRC permitting.

MCA § 85-2-306(3)(a) reads: “Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, *except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.*” (Emphasis added). The full text of MCA § 85-2-306 is attached as Exhibit A to this petition.

In addition, this petition requests that the DNRC add the statutory definition of “track of record” to its regulations to define this phrase used in the amended rule:

MCA § 76-3-103 (16) (a): “‘Tract of record’ means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder’s office.”

3. Effect of Amendment to “Combined Appropriation” Definition

A. Rationale for the Rule Amendment.

The need for the petitioned rule amendment arises because the current language—“two or more groundwater developments that are physically manifold into the same system”—has encouraged a proliferation of exempt wells that has had--and will continue to have—a cumulative adverse effect on senior surface water rights and water resources. With the DNRC’s limited, “physically manifold” definition of combined appropriation, it is possible for multiple, individual wells to evade DNRC permitting review. In addition, encouraging central water and sewer in new subdivision development will be much more difficult so long as the exempt-well loophole remains. This loop-hole allows developers to use multiple, individual wells that are exempt from DNRC review in the development of large-scale subdivisions.

This petitioned rule amendment will stop the use of multiple, individual wells *exempt from DNRC review* in the development of subdivisions. Under the amended rule, a developer may still use individual wells on lots created from a subdivision of land, but

the cumulative impact of those individual wells must be evaluated in a DNRC permit proceeding.

B. Brief Explanation of the Petitioned Rule Amendment.

1. The petitioned rule amendment repeals the current “physically manifold together” definition for the “combined appropriation” in MCA § 85-2-306. Under the amended rule, the statutory limit on flow and volume is the limit on how many exempt wells can be drilled on a particular, existing tract of record, not whether they are physically manifold together or not.
2. A lot in a subdivision that exists as of the effective date of the rule, that was allowed an exempt well under the prior definition of a combined appropriation, will still be allowed to drill an exempt well.
3. Every current owner of a tract of record can still drill an exempt well, so long as they do not already have one, or, the total flow rate and volume of all wells drilled on the piece of property is less than the statutory limit.
4. Even the amended rule will allow exempt wells to be drilled on future subdivisions of land, so long as the subdivided lots are 20 acres or larger, and are therefore not subject to Department of Environmental Quality (DEQ) review under the Sanitation in Subdivisions Act, MCA § 76-4-103.
5. The amended rule precludes *exempt* wells on subdivisions of land, created after the effective date of the rule, that are smaller than 20 acres. *Individual wells* are not precluded, but their collective impact will have to be evaluated in a DNRC water permit proceeding.

C. Legislative Intent Clearly Shows that “Combined Appropriation” Does Not Mean “Not Physically Connected.”

In the 1987 legislative session, House Bill 642 (“HB 642”) created an exception from the otherwise broad grant of exemption from DNRC permitting for individual wells in MCA § 85-2-306. HB 642 in 1987 created the exception that if there was a “combined appropriation” by more than one well that exceeded the statutory flow and volume limitation for “exempt” wells, then those wells needed to go through DNRC permitting.¹

In the Senate’s consideration of HB 642, an amendment was considered to the bill’s “combined appropriation” exception. The water law attorney who presented the amendment, Mr. Ted Doney, representing the Water Development Association, wanted to

¹ At the time of this 1987 amendment, 100 gallons per minute (gpm) was the statutory limit on flow rate for exempt wells. The statutory flow limit was later reduced to 35 gpm, down from 100 gpm, in the 1991 legislative session.

add the explanatory phrase, “wells from the same source” to the bill’s “combined appropriation” exception to exempt wells.

In the Senate’s Natural Resources Committee hearing on HB 642, Mr. Doney explained what the “combined appropriation” exception meant: *“it meant two wells that were irrigating the same tract but not physically connected.”* Minutes of Senate Natural Resources, March 23, 1987, page 9 (emphasis added) (attached to this Petition as Exhibit B). Mr. Doney wanted to add the phrase, “wells from the same source” to clarify this meaning.

Two days later, when Mr. Doney’s amendment was before the Committee for a vote, Senator Keating “inquired whether there was [a] question about the word ‘combined’ in the bill.” Minutes of Senate Natural Resources, March 25, 1987, page 3 (See, Exhibit B). “Both Ted Doney and Representative Spaeth replied there was no problem with the word.” *Id.* Without further discussion, Mr. Doney’s proposed amendment to HB 642’s “combined appropriation” exception was passed with a unanimous vote. Minutes of Senate Natural Resources, March 25, 1987, page 2 (See, Exhibit B).

It is clear from these minutes that the petitioned rule amendment is consistent with the legislative intent of the “combined appropriation” exception to exempt wells. It was never intended to mean wells that were physically connected, as DNRC’s current rule requires. Rather, it was intended to mean wells on the same tract of land, pulling ground water from the same source. The petitioned rule amendment is perfectly consistent with this express legislative intent.

D. Effect of the Rule Amendment

The new proposed rule language defining “combined appropriation” draws a line between existing lots, and lots that have not yet been created through subdivision of existing parcels.

For lots that already exist as of the effective date of the rule—whether that property is a large, undeveloped rural tract or simply an undeveloped lot in a major subdivision—those lots are eligible for an exempt well.

Because the rule defines lots that are eligible for an exempt well by whether or not the lot is created by subdivision after the effective date of the rule, if an existing lot changes ownership without subdivision, then the new owner is still eligible for an exempt well on the undeveloped lot.

The amended rule would only affect developers who subdivide existing parcels. Even then, the amended rule only applies to people who are subdividing existing parcels

into lots smaller than 20 acres.² These newly-created, small lots may still use individual wells for domestic, lawn, and garden uses, but the developer who is subdividing the land will have to obtain a DNRC permit that addresses the collective impact of the individual wells.

E. Implementation of the Amended Rule

Another benefit of the amended rule is that it begins to integrate DEQ and DNRC permitting processes in subdivision development. While the proposed amended rule is just one step in this direction, it is a start that may lead to additional integration, where appropriate.

The amended rule uses the same trigger for DNRC permit review and for DEQ review in subdivision development. This is accomplished by linking a "combined appropriation" to subdivided lots that must go through DEQ review under the Sanitation in Subdivisions Act, MCA Title 76, Chapter 4. Under this proposal, when lots are created by subdivision of an existing parcel that are smaller than 20 acres, those lots must go through both DNRC and DEQ permit review. This step begins to harmonize permit review.

At this stage of the rule's development, discussions with DEQ staff in Helena have envisioned implementation of the proposed rule through DEQ's subdivision application check-list. If this petition for rule amendment were granted, DEQ would add another item in its subdivision application checklist that asks for a correct and complete application for a DNRC permit to a beneficial water use. This means that a developer would be required to have submitted a correct and complete application for a DNRC water right permit *before* DEQ will issue its certificate of subdivision approval. It makes sense to tie together through the subdivision review process DEQ's review of physical water availability with the DNRC's more exacting review of physical *and* legal availability of water.

With regard to lots that may still obtain an exempt well under the proposed rule---those lots that are not part of a combined appropriation---DNRC should be able to implement the rule through a check-off from a County Planning Department or a Clerk and Recorder's Office on the DNRC's Notice of Completion of Groundwater Development (Form 602). The check-off would indicate that the landowner is eligible for an exempt well. Eligible lots or parcels would be those tracts of record that were created prior to the effective date of the rule; or, a lot 20 acres or larger created by subdivision after the effective date of the rule. The County Planning Department's or Clerk and Recorder's check-off would indicate whether the parcel fell into either of the two categories.

² The Sanitation in Subdivisions Act defines "subdivision" as excluding lots 20 acres and larger. MCA 76-4-103 provides: "**What constitutes subdivision.** A subdivision shall comprise only those parcels of less than 20 acres which have been created by a division of land, and the plat thereof shall show all such parcels, whether contiguous or not. The rental or lease of one or more parts of a building, structure, or other improvement, whether existing or proposed, is not a subdivision, as that term is defined in this part, and is not subject to the requirements of this part."

F. Transition Period

The petitioned amendment to the regulatory definition of “combined appropriation” allows for a period of transition before developers can no longer rely on simply obtaining an individual well exempt from DNRC permitting requirements. Such a period of transition is common-sense practice, in that DNRC agency staff, landowners, developers, and local government staff have several years before the full effect of the rule change is felt. The rule amendment as proposed in this petition does not thwart the reasonably-held expectation of someone who currently owns land and is expecting to be able to build a house and rely on an exempt well. In petitioners’ view, this is the kind of accommodation and transition period that provides a reasonable balance between protecting the rights of senior water users and continuing to allow some exempt, individual wells.

The transition period allowed by the petitioned rule language is this: an exempt well may be drilled on every lot already in existence, as of the effective date of the rule. This protects the reasonably-held expectation of someone who owns land--as of the effective date of the rule—that he/she is going to be able to build on that land and rely on an exempt well for water.

In petitioned rule amendment, this approach is legally articulated by the following: “Combined appropriation requiring a permit means . . . a second or any subsequent well, drilled after [the effective date of this rule], on a tract of record in existence on [the effective date of this rule] that together with all wells on that tract exceed the flow rate or volume limitations of 85-2-306(3)(a), MCA.” Here, the important language is that only “a second or any subsequent well” trigger the “combined appropriation” definition, if together they exceed the statutory flow or volume limitations. A *single* well on an existing tract of record is still an “exempt” well under MCA § 85-2-306(3)(a), even after the petitioned rule amendment takes effect.

A “tract of record” is defined by statute at MCA § 76-3-103(16)(a): “Tract of record means an individual parcel of land, irrespective of ownership, that can be identified by legal description, independent of any other parcel of land, using documents on file in the records of the county clerk and recorder’s office.” Even if the tract of record changes ownership after the proposed rule takes effect, the new owner is still eligible for an exempt well, so long as the tract is not subdivided with the change in ownership.

Here are some examples of tract or record:

- A tract of record could be an undeveloped 240-acre parcel.
- A tract of record could also be one of several 20-acre parcels for which a certificate of survey was recorded back in 1985 (before the 1993 amendments to the Subdivision and Platting Act) from an original 240-acre parcel.

- A tract of record can also be a lot in a subdivision that was developed under the terms of the Subdivision and Platting Act.
- A tract of record can be one of two 10-acre lots created by the subdivision of a 20-acre parcel.

Anyone who currently owns any such “tract of record,” or existing parcel of land is still entitled to use an exempt well on their land to build their home. The only exception to this might be if there were terms under which the tract was created that preclude an individual well, such as if the subdivision lots were approved with the condition that there be a public water supply. The same is true for any current owner who sells their land to someone else, without subdividing the parcel. The petitioned rule amendment does not change this.

4. Reasons for Petition to Amend the Definition of Combined Appropriation

The Gallatin County Commission has been grappling with water rights permitting and subdivision approval for several years. In many of the most controversial subdivisions over the past several years, water has been at the heart of the controversy: the Day Ranch, Galactic Park, Northstar, and Autumn Ridge, among others.

For the reasons discussed below, amending DNRC’s rule defining “combined appropriation” as requested in this petition is a key part of the Gallatin County Commission’s ability to create a rational response to addressing the cumulative impacts of individual wells in new subdivisions.

A. Rapid Rate of Growth in Gallatin County

Gallatin County is one of the fastest-growing counties in all of Montana, and has among the fastest *rates* of new growth of anywhere in the United States. This new growth has strained both natural and public resources within the county, and water is no exception.

The population of Gallatin County increased from 21,902³ in 1950, to 67,831 in 2000,⁴ with almost all of the population increase occurring within the Gallatin Valley. Land use in the valley is undergoing a major change: irrigated acreage is decreasing, making way for residential and commercial development. From 1964 to 2002, farmland

³ Geospatial and Statistical Data Center University of Virginia Library
<http://fisher.lib.virginia.edu/collections/stats/histcensus/php/county.php> (February 13, 2006)

⁴ Montana Department of Commerce, *Montana County Decennial Census Resident Population: 1990 and 2000*, <http://ceic.commerce.state.mt.us/C2000/PL2000/ctypop9000.xls> (March 21, 2001).

in Gallatin County decreased from about 410,000 to 290,000 hectares (from 1,000,000 to 700,000 acres).⁵

This rapid population growth means that the aquifer that feeds the Gallatin River is being tapped for ground water at an unprecedented rate. Except for the city of Bozeman (pop. 28,000), all 68,000 county residents rely on ground water for domestic supplies, primarily through individual wells.⁶ Just in the last 20 years, the number of permitted ground water appropriations has nearly tripled.⁷

Over-tapping the aquifer can have a devastating effect on the flows in the Gallatin River. According to Dave Pruitt, long-time chief water commissioner for the Gallatin River, the wells have already had an impact on the Gallatin River.⁸ Increased ground water withdrawals coupled with prolonged drought have caused the Gallatin to reach its lowest base flow in recorded history in December of 2003. On the Gallatin River, "recorded history dates back 114 years and includes the droughts of the 1930's, which gives context to the significance of these figures."⁹ Certainly Gallatin County is not unique. Professor Robert Glennon has documented rivers and streams across the United States that have suffered from dewatering due to new ground water pumping for irrigation, municipal and commercial uses.¹⁰

B. Cumulative Impact of Individual Wells

These concerns warrant a closer look at the recent history of the use of exempt wells in subdivision development. Looking at the number of new lots created, and the proportion of those lots using individual wells, provides a rough estimate of the cumulative adverse impact of exempt wells on senior surface water rights. Attached as Exhibit C to this Petition is a spreadsheet of the total lots by county that have been created since 1990, and a second spreadsheet (Exhibit D) that looks at the proportion of

⁵ Bureau of the Census, *Census of Agriculture: State and County Data* vol. 1, pt. 26, Table 1 (2002), available at <http://www.nass.usda.gov/census/census02/volume1/mt/CenV1MT1.txt>.

⁶ M.R. Cannon and Dave R. Johnson, *Estimated Water Use in Montana in 2000*, U.S. Geological Survey Scientific Investigations Report 2004-5223, 27, http://pubs.usgs.gov/sir/2004/5223/pdf/sir2004_5223.pdf (last updated Sept. 16, 2005).

⁷ Gallatin County now has 11,076 permitted ground water appropriations. In 1986, the number was just 3,779. Montana Department of Natural Resources and Conservation, *DNRC Water-Right Query System*, <http://nris.state.mt.us/dnrc/waterrights/default.aspx> (accessed April 17, 2005).

⁸ Dave Pruitt, personal communication to Laura Ziemer (March 1, 2005).

⁹ S. R. Kinsella, *Conserving the West's Groundwater Resources*, 46 Trout: The Journal of Coldwater Fisheries Conservation 19, 23 (Summer 2004).

¹⁰ Robert Glennon, *Water Follies: Groundwater Pumping and the Fate of America's Fresh Waters* 3 (Island Press 2002) (noting that ground water pumping has depleted natural freshwater supplies and may exhaust aquifers).

individual wells to lots approved in 2005.¹¹ This data helps reveal the magnitude of the cumulative impact of exempt wells.

For example, since 1990 state-wide, the number of subdivision lots approved in Montana is 103,986. While the number of exempt wells that were used on the 103,986 lots is not readily accessible, the second spreadsheet contains the number of individual wells relative to lots approved in 2005. In 2005, of the 7,076 lots approved, 4,198 lots were approved for individual wells, or nearly 60%. The magnitude of these numbers underscores the urgency in addressing the proliferation of exempt wells.

What is also apparent, but not surprising, from these data sets is that there has been a steady increase in the number of lots created statewide between 1990 and 2005. In fact, the increase is more than three-fold, and 2004 and 2005 showed a substantial increase over most previous years.

In addition, within the upper Missouri basin, there are pockets of substantial growth in subdivision activity, not only in the primary urban centers—Gallatin and Lewis and Clark Counties—but also in some more rural counties such as Madison and Broadwater counties. In Broadwater County, for example, the number of lots approved increased by over 340% between 2000 and 2005, from 64 to 224 lots approved. This trend is consistent across other rural counties.

Even outside the upper Missouri basin, as is well-known, there has been a substantial increase in development over the past few years—Flathead, Ravalli, and Yellowstone County, to name just three. Ravalli County alone had more lots approved in 2005 than did all of Yellowstone County.

Of course, not all of these lots are served by individual wells, but a substantial number are. As the second spreadsheet shows (Exhibit D), while there is a wide range in the number of exempt wells as a percentage of total new lots, the numbers are nonetheless striking. Statewide, nearly sixty percent of the wells lots approved in 2006 were approved with individual wells. It's fair to assume those will all be drilled under the MCA 85-2-306 exemption from water rights permitting.¹²

In closed basins such as the upper Missouri, these numbers are even more compelling. There, but for Madison and Gallatin Counties, the majority of the lots had individual wells. The figures for the upper Missouri are as follows:

¹¹ This data is from the Montana Department of Environmental Quality (DEQ), from Steve Kilbreath, Supervisor, Subdivision Section, Public Water and Subdivisions Bureau.

¹² If the numbers on the two attachments are compared, there appears to be some slight discrepancy between the totals. Although the data for both spreadsheets comes from DEQ, there are some discrepancies in how different lots are counted for different purposes. The discrepancies don't change the depiction of the trend in subdivision development, both as to increasing lots and as to the prevalence of lots with individual wells.

| CNTY_NAME | TOTAL APPS FY05 | TOTAL LOTS FY05 | Individual Wells | Individual Cisterns | Multi User Water System | New Public Water System | Connections or Extentions to City | Total |
|---------------|-----------------------|-----------------------|---------------------|------------------------|----------------------------------|-------------------------------|--|-------|
| Beaverhead | 9 | 18 | 18 | 0 | 0 | 0 | 0 | 18 |
| Jefferson | 29 | 118 | 116 | 0 | 0 | 0 | 2 | 118 |
| Cascade | 31 | 133 | 92 | 0 | 1 | 0 | 36 | 129 |
| Broadwater | 27 | 228 | 227 | 1 | 0 | 0 | 0 | 228 |
| Lewis & Clark | 67 | 280 | 196 | 0 | 2 | 0 | 57 | 255 |
| Madison | 52 | 448 | 166 | 0 | 0 | 2 | 80 | 248 |
| Gallatin | 155 | 923 | 191 | 0 | 1 | 0 | 233 | 425 |
| Meagher | 2 | 3 | 3 | 0 | 0 | 0 | 0 | 3 |

Clearly, in the upper Missouri, the vast majority of subdivision development is using the exempt wells to provide water supply.

The ability to use exempt wells in subdivision development is directly the result of the Department's narrow interpretation of the statutory term, "combined appropriation," in section 85-2-306 of the Water Code. The number of exempt wells plus the state-wide trend of rapidly-increasing subdivision lot approvals highlights the need to address—without delay--- the adverse cumulative impact of exempt wells.

C. Adverse Impact on Senior Water Rights

Although individually not significant, collectively the impact of many small wells on river flows and senior surface water rights is measurable. A recent district court decision in Idaho suggests where the future could lie for Montana on the cumulative impact of individual, domestic wells on senior water rights: *American Falls Reservoir Dist. No. 2, et al v. Idaho Dep't of Water Resources* (Case No. CV-2005-0000600, June 2006). This Idaho court decision lends even more urgency to this discussion. In June, an Idaho district court ruled on Idaho's conjunctive management rules (CMR's) --- the rules by which the Idaho state engineer was trying to handle a "call" on junior groundwater users from senior irrigation water right holders. This is the latest development in Idaho's struggle to deal with groundwater pumping on the Snake River plain that has— apparently--caused an unprecedented water shortage among irrigators with senior rights to Snake River water. The Idaho district court ruled that the CMR's are unconstitutional, due to the rules' failure to fully protect the senior water users' property rights.

Near the end of this exhaustive opinion (on page 108), the court addressed domestic wells, and acknowledged their adverse cumulative impact on river flows and senior rights.¹³ After these findings, the court held that: "Therefore, the Director's wholesale exclusion of such domestic rights from administration [of a call] is

¹³ The entire decision is on Idaho Department of Water Resources' website, at <http://www.idwr.idaho.gov/Calls/Water%20Call%20Lawsuits/default.htm>

unequivocally unconstitutionally [sic] and can amount to an unlawful taking of prior vested water rights.” In other words, the Idaho court ruled that even small domestic groundwater wells could be subject to a “call” by senior right holders, and it was unconstitutional for the State to exclude from consideration the cumulative, adverse impact of these small domestic wells on the senior rights of irrigators.

Similarly, just this year in Colorado’s Platte River basin, Colorado was forced to cut off at least 400 junior groundwater irrigators due to their impact on senior water right holders. Many of these junior groundwater irrigators have gone out of business, and seen their property values halved.

It is only a matter of time before this kind of challenge to out-of-priority groundwater pumping comes to Montana. Given the recent experience of Idaho and Colorado, Montana’s exempt wells appear vulnerable to challenge.

D. Closing the Exempt-Well Loophole is Key to Rational County Water Policy with regard to New Subdivision Development

Changing the scope of the “combined appropriation” exception from the current, narrow “physically manifold” standard is key to Gallatin County’s ability to encourage central water and sewer in new subdivision development. As explained in more detail below, the Gallatin County Commission has been grappling with water rights permitting in the subdivision review process for several years.

Because water right issues have been one of the most controversial elements in subdivision development, the Gallatin County Commission requested that a Water Resources Task Force be assembled to advise the County on water rights and flood plain issues in January of 2004. A memo to the Gallatin County Commission from the Task Force that describes the Task Force’s deliberations and recommendations to the County Commission is attached as Exhibit E. The multi-stakeholder Task Force had significant expertise across a number of disciplines, and met regularly for several months. The Gallatin County Local Water Quality District staff, Alan English and Tammy Crone, facilitated the Task Force meetings. The Task Force delivered its final report to the Gallatin Commission by the fall of 2004, in time to inform the Commission’s consideration of revisions to its subdivision regulations. One of the observations and recommendations of the Task Force was the common-sense notion that public water and sewer systems for large subdivisions were preferred over individual wells and septic systems.

The Gallatin County Commission addressed water rights issues when it passed its overhaul of its subdivision review regulations last year, in February of 2005. The change that the Commission made to its subdivision regulations at that time was to require developers to obtain their water rights permit approval from the DNRC at the time of *preliminary plat* review, rather than as a condition of *final* plat approval. This had the effect of making the developer square away the water rights issue *before* moving ahead

with other aspects of the subdivision development. The rationale for this rule change was perhaps best summed up by Commissioner Vincent during the public hearings, when he posed the question, “when the first settlers came to Montana, did they first build their house and *then* drill a well, or did they sink the well *first* and then build the house?”

After implementation of this new subdivision regulation changing the timing for obtaining a water use permit from DNRC, developers began to voice concern about the amount of time that obtaining a DNRC water right could take. Pressure began to build from developers to allow subdivision development to go forward without first obtaining a water right. It also had the unintended consequence of encouraging some developers to go to multiple, individual wells in a subdivision so that they could avoid DNRC permit review altogether, and thereby avoid any delay associated with the DNRC permitting process.

As a result, about a year later in February of 2006, the County Commission asked a sub-committee of the Task Force to meet and consider the effects of the Commission rule change. This sub-committee considered the delay on subdivision developments imposed by the rule change and the unintended consequence of encouraging some developers toward multiple, individual wells. The Task Force sub-committee proposed another rule change that would add another step between preliminary and final plat. This step was proposed as a construction phase, so that developers could move forward with a subdivision and obtain preliminary plat approval from the Commission, but could not begin *construction* at a subdivision site until the developer obtained all relevant permits, including the water right permit from DNRC.

Although this approach had appeal, it was complicated by the fact that the Subdivision and Platting Act only gives the County Commission authority to impose conditions at either preliminary or final plat. County Commissions do not have statutory authority to add a new phase in subdivision review. The County Attorney, Marty Lambert, testified in public hearings that the proposed “construction phase” could not be enforced if it were violated by a developer through fines or other regulatory mechanisms. The County would have to bring a district court action and obtain an injunction to stop a developer who violated the “construction phase” requirement.

Faced with this stumbling block, the County Commission requested that the full Task Force be reconvened to review and comment on the situation, and provide a recommendation for the Commission. The Commission’s dilemma was this. On the one hand, the County Commission wanted to encourage new subdivision development to have central water and sewer, which required DNRC permit review. On the other hand, the fact that new subdivisions could instead rely on individual, 35 gallon-per-minute wells for each new home without going through water rights permitting created a significant disincentive for new developments to include central water and sewer.

The Gallatin County Local Water Quality District then reconvened the Task Force, which met on April, 20, 2006. The *Montana Trout Unlimited v. DNRC* ruling had recently been announced by the Montana Supreme Court, and set the context for the

discussions. After lengthy deliberation, the Task Force made a consensus recommendation to the Gallatin County Commission that augmentation be required for proposed subdivisions, if the proposed subdivision intends to rely on “exempt” groundwater wells (wells using less than 35 gallons per minute or 10 acre-feet per year of groundwater). Another part of this recommendation was that if the exempt-well augmentation was required, then the County’s requirement for obtaining a beneficial water use permit could be moved from preliminary to final plat. Together, these were significant recommendations because they were consensus recommendations from a multi-stakeholder group that included developers, builders, engineering and hydrology consultants, irrigators, and conservationists.

The following participants of the Task Force met on April 20, 2006, and participated in the consensus recommendation to require exempt-well augmentation:

| Name | Representing |
|------------------|----------------------------|
| Alan Armstrong | Gallatin County GIS |
| Barbara Campbell | Utility Solutions |
| Scott Compton | DNRC-Bozeman |
| Alan English | GLWQD |
| Rich Fillbach | Hyalite Engineers |
| Marty Gagnon | Morrison-Maierle Inc. |
| Russell Levens | DNRC-Helena |
| Sean O’Callaghan | Gallatin County Planning |
| Cordell Pool | Stahly Enginnering |
| Tim Roark | Environmental Health Serv. |
| Walt Sales | AGAI |
| Mick Seeburg | AGAI |
| Richard Smith | SWMBA |
| Laura Ziemer | Trout Unlimited |

County Commission public hearings subsequent to the Task Force recommendations revealed that the County’s legal department was hesitant to require county-wide standards that were more strict than statewide standards, especially in an area as controversial and specialized as water management and permitting. In addition, several DNRC staff indicated that the agency would have difficulty in processing change applications for augmentation plans linked to exempt wells under DNRC’s current regulatory scheme, because the exempt wells are not subject to DNRC jurisdiction.

As a result, the Gallatin County Commission again requested that the Task Force re-convene and consider these ramifications of the original recommendation. The Task Force met again on May 22, 2006.

In May, the Task Force discussed at length the tension between the DNRC’s efforts to address the cumulative impact of groundwater pumping from exempt wells, and the effort of Gallatin County to do the same. Rather than create confusion, and, possibly, conflict between two competing requirements to mitigate the adverse impacts from exempt groundwater wells—one that applied state-wide and one that applied specifically to Gallatin County—the Task Force felt that the most appropriate course of action was

for the Gallatin County Commission to request the DNRC to engage in state-wide rule-making to address the issue of impacts from exempt wells in subdivisions. In the May meeting, the Task Force came to another consensus recommendation that the Gallatin County Commission seek rule-making through DNRC to address the proliferation of exempt wells in subdivisions.

The Task Force further recommended to the Commission that if the DNRC did not undertake rule-making on this urgent issue by the fall of 2006, that the Gallatin County Commission engage in its own rule-making to adopt the original recommendation of the Task Force, and thereby implement county-specific augmentation requirements for exempt wells.

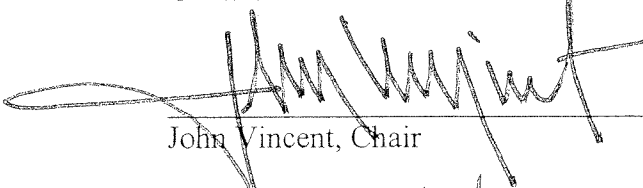
5. Conclusion

For the reasons stated above, the Gallatin County Commission requests that the DNRC grant their petition to amend the definition of "combined appropriation." This rule amendment will help the Gallatin County Commission in their effort to implement a rational and fair policy regarding water and subdivision development, as well as help minimize harm to senior surface water rights.

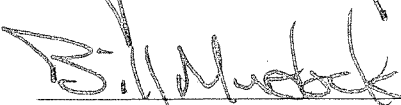
WHEREFORE, petitioner requests the DNRC to amend the definition of combined appropriation, and add the statutory definition of "tract of record" to DNRC's regulatory definitions.

This 24th day of October, 2006.

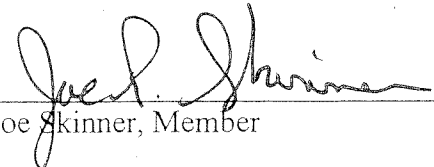
GALLATIN COUNTY COMMISSION



John Vincent, Chair



Bill Murdock, Member



Joe Skinner, Member

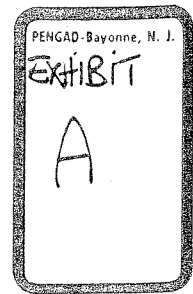
MCA 85-2-306

MONTANA CODE ANNOTATED

TITLE 85. WATER USE

CHAPTER 2. SURFACE WATER AND GROUND WATER

PART 3. APPROPRIATIONS, PERMITS, AND CERTIFICATES OF WATER RIGHTS



85-2-306. Exceptions to permit requirements

(1) Ground water may be appropriated only by a person who has a possessory interest in the property where the water is to be put to beneficial use and exclusive property rights in the ground water development works or, if another person has rights in the ground water development works, with the written consent of the person with those property rights. If the person does not have a possessory interest in the real property from which the ground water may be appropriated, the person shall provide to the owner of the real property written notification of the works and the person's intent to appropriate ground water from the works. The written notification must be provided to the landowner at least 30 days prior to constructing any associated works or, if no new or expanded works are proposed, 30 days prior to appropriating the water. The written notification under this subsection is a notice requirement only and does not create an easement in or over the real property where the ground water development works are located.

(2) Inside the boundaries of a controlled ground water area, ground water may be appropriated only:

(a) according to a permit received pursuant to 85-2-508; or

(b) according to the requirements of an order issued pursuant to 85-2-507.

(3) (a) Outside the boundaries of a controlled ground water area, a permit is not required before appropriating ground water by means of a well or developed spring with a maximum appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, except that a combined appropriation from the same source from two or more wells or developed springs exceeding this limitation requires a permit.

(b) (i) Within 60 days of completion of the well or developed spring and appropriation of the ground water for beneficial use, the appropriator shall file a notice of completion with the department on a form provided by the department through its offices.

(ii) Upon receipt of the notice, the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it. A notice does not lose priority of filing because of defects if the notice is corrected, completed, and refiled with the department within 30 days of notification of defects or within a further time as the department may allow, not to exceed 6 months.

(iii) If a notice is not corrected and completed within the time allowed, the priority date of appropriation is the date of refileing a correct and complete notice with the department.

(c) A certificate of water right may not be issued until a correct and complete notice has been filed with the department, including proof of landowner notification as necessary under subsection (1). The original of the certificate must be sent to the appropriator. The

department shall keep a copy of the certificate in its office in Helena. The date of filing of the notice of completion is the date of priority of the right.

(4) An appropriator of ground water by means of a well or developed spring first put to beneficial use between January 1, 1962, and July 1, 1973, who did not file a notice of completion, as required by laws in force prior to April 14, 1981, with the county clerk and recorder shall file a notice of completion, as provided in subsection (3), with the department to perfect the water right. The filing of a claim pursuant to 85-2-221 is sufficient notice of completion under this subsection. The priority date of the appropriation is the date of the filing of a notice, as provided in subsection (3), or the date of the filing of the claim of existing water right.

(5) An appropriation under subsection (4) is an existing right, and a permit is not required. However, the department shall acknowledge the receipt of a correct and complete filing of a notice of completion, except that for an appropriation of 35 gallons a minute or less, not to exceed 10 acre-feet a year, the department shall issue a certificate of water right. If a certificate is issued under this section, a certificate need not be issued under the adjudication proceedings provided for in 85-2-236.

(6) A permit is not required before constructing an impoundment or pit and appropriating water for use by livestock if:

- (a) the maximum capacity of the impoundment or pit is less than 15 acre-feet;
- (b) the appropriation is less than 30 acre-feet a year;
- (c) the appropriation is from a source other than a perennial flowing stream; and
- (d) the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger.

(7) Within 60 days after constructing an impoundment or pit, the appropriator shall apply for a permit as prescribed by this part. Upon receipt of a correct and complete application for a stockwater provisional permit, the department shall automatically issue a provisional permit. If the department determines after a hearing that the rights of other appropriators have been or will be adversely affected, it may revoke the permit or require the permittee to modify the impoundment or pit and may then make the permit subject to terms, conditions, restrictions, or limitations that it considers necessary to protect the rights of other appropriators.

(8) A person may also appropriate water without applying for or prior to receiving a permit under rules adopted by the department under 85-2-113.

History: En. Sec. 16, Ch. 452, L. 1973; amd. Sec. 2, Ch. 238, L. 1974; amd. Sec. 8, Ch. 485, L. 1975; amd. Sec. 4, Ch. 416, L. 1977; amd. Sec. 1, Ch. 470, L. 1977; R.C.M. 1947, 89-880(5), (7); amd. Sec. 1, Ch. 30, L. 1981; amd. Sec. 1, Ch. 160, L. 1981; amd. Sec. 1, Ch. 357, L. 1981; amd. Sec. 8, Ch. 448, L. 1983; amd. Sec. 1, Ch. 499, L. 1985; amd. Sec. 2, Ch. 535, L. 1987; amd. Sec. 1, Ch. 432, L. 1989; amd. Sec. 13, Ch. 769, L. 1991; amd. Sec. 4, Ch. 805, L. 1991; amd. Sec. 9, Ch. 629, L. 1993; amd. Sec. 447, Ch. 418, L. 1995; amd. Sec. 1, Ch. 250, L. 1999; amd. Sec. 3, Ch. 78, L. 2001; amd. Sec. 3, Ch. 161, L. 2005.

tribes and the federal government and in decrees and stipulations involving individual claimants, and thus the Legislature believes that it is necessary to ensure that parties who have been recognized as having filed claims on or before April 30, 1982, and holders of federal reserved water rights are not adversely affected by the inclusion of new parties in the adjudication by subjecting the right to file those claims in remission to certain terms and conditions; and

WHEREAS, the Legislature wishes to provide protection for timely filed claimants from incurring additional costs or from being adversely affected by justifiable reliance on the presumption of abandonment; and

WHEREAS, the Legislature wishes to provide a conclusive adjudication of existing water rights; and

WHEREAS, the Legislature recognizes that according a privilege to file additional statements of claim presents a potential for abuse by those who may attempt to refile previously adjudicated claims, and the Legislature thus believes that the courts should deal harshly with any abuses by such measures as, without limitation, the imposition of sanctions under Rule 11, Montana Rules of Civil Procedure; and

WHEREAS, the Legislature determines that the deadline for filing water right claims as provided in this bill appropriately balances the interests at stake in the adjudication.

THEREFORE, the Legislature finds it is appropriate to make the following amendments to sections 85-2-102, 85-2-211 [now repealed], 85-2-213, 85-2-221, 85-2-225, 85-2-226, 85-2-234, 85-2-237, and **85-2-306**, MCA, in order to provide for the acceptance of late claims to the use of water under the conditions set forth in this bill. Additionally, the Legislature directs the Water Policy Committee, in coordination with the Department of Justice, the Department of Natural Resources and Conservation, and the Reserved Water Rights Compact Commission, to conduct an interim study regarding certain late claim issues."

Saving Clause: Section 11, Ch. 629, L. 1993, provided: "[This act] does not affect proceedings that were begun before [passage and approval of this act] [approved May 11, 1993] in which relief for damages have been sought based upon the diversion, impoundment, or withdrawal of water without a water right established under state law."

Severability -- Partial Nonseverability: Section 12, Ch. 629, L. 1993, provided: "(1) If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

(2) It is the intent of the legislature that each part of [this act] is essentially dependent upon [section 4], which amends 85-2-221, and that if one part of [section 4], except subsection (3)(f)(ii), is held unconstitutional or invalid, all other parts of [this act] are invalid."

1991 Amendments: Chapter 769 in (1), at end of third sentence, inserted "and pay a filing fee"; and inserted (5) assessing a \$10 filing fee for filing notice of completion and directing deposit of the fee in the ground water assessment account. Amendment effective July 1, 1991, and terminates July 1, 1993.

Chapter 805 in (1) and (2) substituted "35 gallons per minute or less, not to exceed 10 acre-feet per year" for "less than 100 gallons per minute". Amendment effective July 1, 1991.

1989 Amendment: In (1), after "person who has", deleted "either", inserted clause relating to a possessory interest, and after "or" inserted clause relating to another's rights in ground water development works. Amendment effective April 4, 1989.

1987 Amendment: In (1), in second sentence, inserted exception relating to combined appropriation, near end substituted "appropriator" for "county clerk and recorder in the county where the point of diversion or place of use is located for recordation", and deleted sentence that read: "After recordation, the clerk and recorder shall send the certificate to the appropriator"; and in (2) inserted last sentence concerning certificate issuance.

NOTES, REFERENCES, AND ANNOTATIONS

Compiler's Comments

2005 Amendment: Chapter 161 inserted (2) pertaining to appropriating ground water according to a permit or an order; in (3)(c) in first sentence at end substituted "subsection (1)" for "this subsection"; in (4) in first sentence near end and in third sentence substituted "subsection (3)" for "subsection (1)"; in (5) in first sentence near beginning substituted "subsection (4)" for "this subsection"; in (6)(d) deleted former second sentence that read: "As used in this subsection, "perennial flowing stream" means a stream that historically has flowed continuously during all seasons of the year, during dry as well as wet years"; and made minor changes in style. Amendment effective April 7, 2005.

2001 Amendment: Chapter 78 in (1) inserted fourth sentence providing that the written notification does not create an easement, at end of sixth sentence after "department" substituted "through its offices" for "at its offices and at the offices of the county clerk and recorders", and in eighth sentence after "30 days" inserted "of notification of defects"; and made minor changes in style. Amendment effective March 20, 2001.

1999 Amendment: Chapter 250 inserted second and third sentences in (1) requiring person developing ground water source on another person's land to provide 30 days' written notice of proposed development and appropriation and at end of ninth sentence inserted "including proof of landowner notification as necessary under this subsection"; and made minor changes in style. Amendment effective July 1, 1999.

1995 Amendment: Chapter 418 in (4) substituted "department" for "board"; and made minor changes in style. Amendment effective July 1, 1995.

Transition: Section 499, Ch. 418, L. 1995, provided: "The provisions of 2-15- 131 through 2-15-137 apply to [this act]."

Saving Clause: Section 503, Ch. 418, L. 1995, was a saving clause.

1993 Amendment: Chapter 629 near beginning of second sentence of (2), after "claim", deleted "of existing water right"; and made minor changes in style. Amendment effective July 1, 1993.

Preamble: The preamble attached to Ch. 629, L. 1993, provided: "WHEREAS, Article IX, section 3, of the Montana Constitution provides that all existing rights to the use of any waters for any useful or beneficial purpose are recognized and confirmed; and

WHEREAS, Article IX, section 3, of the Montana Constitution requires the Legislature to provide for the administration, control, and regulation of water rights and to establish a system of centralized records for such rights; and

WHEREAS, the Legislature established a procedure for the general adjudication of existing rights to the use of water and provided in section 85-2-226, MCA, that the failure to file a claim of existing right on or before the deadline established under section 85-2-221, MCA, would establish a conclusive abandonment of the right; and

WHEREAS, the Montana Supreme Court, in In the Matter of the Adjudication of the Water Rights Within the Yellowstone River, 253 Mont. 167, 832 P.2d 1210 (1992), has determined that the failure to file a statement of claim to an existing right to the use of water on or before April 30, 1982, resulted in the forfeiture of that right; and

WHEREAS, it has come to the attention of the Legislature that the forfeiture of water rights for failure to timely file a claim has in some instances caused hardship, and the Legislature accordingly desires to provide water rights claimants with one more opportunity to file a water rights claim in the general adjudication; and

WHEREAS, in so doing, the Legislature recognizes that the adjudication process will not be completed for many years but that a substantial amount of progress has already occurred in the adjudication, specifically in the area of water rights compacts with Indian

1985 Amendment: In (1) inserted first sentence limiting the appropriation of ground water to a person who has either exclusive property rights in the ground water development works or written consent of the person with those property rights.

1983 Amendment: Inserted second sentence of (2), dealing with existing water right under 85-2-221; in third sentence of (2) after "section" inserted "or the date of the filing of the claim of existing water right"; in (3) after "the appropriation is" inserted "less than 30 acre-feet per year and is".

1981 Amendments: Chapter 30 inserted "and the impoundment or pit is to be constructed on and will be accessible to a parcel of land that is owned or under the control of the applicant and that is 40 acres or larger" in the middle of (3).

Chapter 160 substituted "within 60 days after" for "before" in the third sentence of (3); inserted the fourth sentence in (3) requiring the Department to automatically issue a provisional permit upon receipt of a correct and complete stockwater provisional permit application; substituted "after a hearing" for "after processing the application" in the last sentence of (3); substituted "it may revoke the permit or require the permittee to modify the impoundment or pit and may then make" for "it may require the applicant to modify the construction of the impoundment or pit and issue" in the last sentence of (3).

Chapter 357 inserted "or developed spring" after "well" in two places in (1); substituted "maximum appropriation of less than 100 gallons per minute" for "maximum yield of less than 100 gallons a minute" in the first sentence of (1); inserted "with the department" after "notice of completion" in the second sentence of (1); substituted "the department shall review the notice and may, before issuing a certificate of water right, return a defective notice for correction or completion, together with the reasons for returning it" for "the department shall automatically issue a certificate of water rights" in the third sentence of (1); inserted the fourth, fifth, and sixth sentences in (1) relating to procedures when notice of ground water appropriation is defective; and inserted (2) describing procedures for issuance of a certificate of water right for a person who appropriates ground water by means of a well or developed spring, put to beneficial use between January 1, 1962, and July 1, 1973, and who did not file a required notice of completion.

Applicability: Section 2, Ch. 30, L. 1981, provided: "This act applies to applications pending with the department on the effective date of this act, as well as applications filed with the department after the effective date of this act."

Subsection (1), sec. 7, Ch. 357, L. 1981, provided: "Subsection (2) of section 1 [sec. 1, Ch. 357, L. 1981, amending **85-2-306**] applies to all notices of completion filed with the department after July 1, 1973."

Subsection (2), sec. 7, Ch. 357, L. 1981, provided: "Subsection (1) of section 1 [sec. 1, Ch. 357, L. 1981, amending **85-2-306**], section 3 [sec. 3, Ch. 357, L. 1981, amending 85-2-310], and section 4 [sec. 4, Ch. 357, L. 1981, amending 85-2-311] apply to notices of completion and applications pending before the department and to those filed with the department after April 14, 1981."

Cross-References

Ground water, Title 85, ch. 2, part 5.

MCA 85-2-306, MT ST 85-2-306

Current through the 2005 Regular Session of the 59th Legislature

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*Minutes for Senate
Nat Resources*Senate Natural Resources
March 23, 1997
Page 8

HB 642

PENGAD-Bayonne, N. J.

EXHIBIT

B

Wayne Fletcher, professional chemist and Vice President of the Lewis and Clark Chapter of the Montana Mining Association, stated that HB 629 would find almost universal support in the mining community if amendments were incorporated to do the following:

1. Remove potentially enormous bonding requirements.
2. Remove the unnecessary restrictions on prospecting.
3. Address only the use of cyanide and other hazardous chemicals. (Exhibit 14)

Ian Hendrickson, Mining Consultant in Helena, said that HB 629 essentially "wipes out the small miner." Under this bill, a permit would be needed to use any chemical reagent. Mr. Hendrickson stated that Idaho is considering cyanide legislation with which he concurred. Taking exception to the definition of "abandonment," Mr. Hendrickson stated that as economic changes occur, there would be unnecessary loss of potential mines and cited Montana Tumais, Butte's East Pit, and the mine at Winston as examples. (Exhibit 15)

OPPONENTS: There were no opponents present.

Senator Keating announced that most of the "proponents" in his judgement as Chairman, were in actuality "opponents" because they had amendments to the bill. Also, he said executive action would not be taken on March 23, but he advised the people who had testified to place their addresses as well as their names on the visitor's roster so that committee members could be in touch with them. Also, Sen. Keating announced that there may be a possibility of a subcommittee's being appointed since there were so many people and issues involved in HB 629.

CONSIDERATION OF HOUSE BILL 642: Rep. Spaeth, House District 84, emphasized that HB 642 deals only with general revisions in water appropriation process and not with adjudication. He said that HB 642 would revise the permit and utilization provisions of the water use laws; altering the filing and issuance requirements of a certificate of water right. He said that wells that have less than 100 gallons per minute were exempt from the permitting process; but he understood that Mr. Honey was going to present an amendment to the effect that more than one well from the same source that brings 100 gallons a minute or more should also go through the permitting process. Also, the bill pertains to water reservations in the Missouri River below Fort Peck Dam that must be filed no later than July 1 1991. The controversial part of the bill is listed on the bottom of page 14 which gives the DNRC discretionary authority.

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Gary Fritz, DNRC, commented on the "controversial" part of the bill. He said that existing laws make existing users subordinate to reservations adopted between July 1, 1935, and 1991. The section would allow the Board of Natural Resources to decide reservations on a stream by stream basis. The interim permits mean that users can go on as before if they don't interfere with the reservations. Mr. Fritz gave an example of a water user with reserving permit after July 1985--Romaine Cattle Company, 30 gallons per minute for stockwater purposes out of the Marion River. Mr. Fritz stated this water user would be "junior" to all reservations adopted by the Board in 1991. DNRC suggested that the Board be given the discretion to decide what uses would be more important and would take priority (whether the reservation comes first or the permitting comes first). DNRC would now have the discretionary authority under HB 642 on a case by case basis.

Gary Fritz mentioned the new section 10 that would have been a repealer for an applicant applying for 3,000 acres of water, but the House had struck that section, and applicants must go to the legislature when wanting to apply for 3,000 acres or more.

Ted Doney, an attorney who specializes in water law represented the Water Development Association. He said that he supported the bill in general with two exceptions.

1. Amendment from the house, page 2, would create a legal problem. Mr. Doney presented an amendment to state that two wells that total 100 gallons or more would originate from the same source." (Exhibit 16)

2. Mr. Doney disliked the word "combined" because he didn't know what the word meant in the bill. He thought it meant that two wells that were irrigating the same tract but not physically connected. Mr. Doney would rather the bill would read "wells from the same source."

He also mentioned that if an irrigator has a priority date after July 1, 1985, he would have to object to all the Missouri River reservations and get DNRC to "subordinate" reservation to his permit. Mr. Doney stated that he felt most of the farmers and ranchers would not know the procedure. He said that he had talked to Mr. McIntyre who explained "subordinate" in the bill to mean that permits of farmers and ranchers would have the preference of use over the water reservations. Mr. Doney said "subordinate" has not been used in water law. However, he said he supported HB 642 if the bill were passed with his proposed amendment adopted.

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Jim Flynn, Department of Fish, Wildlife and Parks, supported HB 642, but stated a concern with one portion of the bill on page 14, lines 20-25, which sets up two priority dates. A reservation allocates water availability to users and non-users. Mr. Flynn stated that the cumulative effect of many permits could interfere with reservations, then DNRC will have to sort out who gets the priority. He said that HB 642 sets up dual permitting, and recommended returning to the original language of the bill on page 14.

Don Jenni from Lewistown explained that he had written a letter to the committee expressing his opposition to the House's reinstating the repealer in section 21. He said that if 85-2-317, MAC, is not going to be repealed, then a change should be made increasing 3,000 acre feet of water to 4,000 acre feet of water in order to make the section consistent with other provisions of State law. Also, Mr. Jenni suggested that 85-2-317 (3) have the addition of "hydropower."

Star Bradshaw, Trout Unlimited, agreed with Mr. Flynn's proposal of returning to original language on page 14.

OPPOSERS: There were no opponents.

Sen. Keating noted that although proponents supported the bill, they all had exceptions and opposed some section.

CLOSING: Rep. Spaeth said that he liked and supported Mr. Honey's amendment. Rep. Spaeth addressed the issue on page 14. The water reservation in the statute will not affect any permits, etc., prior to 1985. Rep. Spaeth stated that FIS on water reservations will deal with cumulative effects and will list all the existing users. If the DNRC is not given discretionary power which is "middle ground" approach, the only option of users would be to object to water reservations. Rep. Spaeth announced that he was committed to the language on page 14.

CONSIDERATION OF HOUSE BILL 661: Representative Spaeth, sponsor of the bill introduced the title: "An Act Further Defining the Term 'Project' to Clarify that a Project Does Not Include Maintenance and Repair of Existing Irrigation Facilities. He said that the bill dealt with 310 Permits. The bill is very important to irrigation counties. Rep. Spaeth said the reason the bill was written was because for the first time since the 1975 bill, Natural Streambed and Land Preservation Act, it was interpreted by the Attorney General that historical usage had not been grandfathered out of the 1975 act.

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March 25, 1987

Page 2

1. Sewage pollution in Flathead Lake seemed to be a local problem rather than a State-wide problem, except in fringe urban areas and clay-type soil.
2. Local boards at present do have authority concerning septic tank sewage systems.
3. Passing of HB 746 would mean more growth of local government.
4. Assessing fees for existing systems would amount to an additional "tax" for the people.

In addition, Sen. Gage said that part of the problem for pollution in Flathead Lake was phosphate, and in the 1985 session, there was testimony that agriculture was contributing 10 times more phosphate pollution than use of household detergents. Sen. Gage stated that nothing is being done concerning agricultural controls; and until major problems are taken care of, there is no need to take care of "around the edges."

Members of the committee asked Mr. Zackheim if all septic tanks were not under DHES control, and he answered that only new subdivisions are unless there is a problem with a particular sewage system that comes to DHES' attention.

Motion that HB 746 NOT BE CONCURRED IN passed with a majority vote, with Sen. Halligan opposing the motion.

DISPOSITION OF HOUSE BILL 453: HB 453 would authorize Department of Commerce to represent tourism in Flathead Lake management at no extra cost to State government. Sen. Lynch moved that HB 453 BE CONCURRED IN. Motion passed by majority vote. Sens. Severson, Gage, and Halligan voted "no."

DISPOSITION OF HOUSE BILL 642: HB 642 would revise water permit laws and qualify Missouri Basin Water Reservations. Sen. Keating stated that at the March 23 meeting, an amendment had been proposed by Ted Doney:

Page 2, line 24

Following: "APPROPRIATION"

Insert: "from the same source"

Sen. Walker moved that the amendment be adopted, and motion passed with unanimous vote.

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March 25, 1987
Page 3

Sen. Keating inquired whether there was question about the word "combined" in the bill and both Ted Doney and Rep. Spaeth replied there was no problem with the word.

Sen. Keating mentioned that on page 21 of the bill, section 10 was a repealer of 85-2-317 MCA. Sen. Keating related the fact that DNRC had a sufficient handle on permits, process, and applications, and he did not understand why citizenry should be required to wait two years to receive approval to use 3,000 acre feet of water from legislature when the department could easily approve.

Sen. Halligan made a motion that section 10 be reinstated to repeal the requirement that applicants must go before the legislature for use of more than 3,000 acre feet of water. Sen. Lynch stated that the requirement had only been in effect since 1983 and the system was working well. Roll Call Vote was taken on the motion and the motion FAILED.

Sen. Lynch moved that HB 642 AS AMENDED, BE CONCURRED IN. Motion CARRIED unanimously.

DISPOSITION OF HOUSE BILL 661: Sen. Keating told the committee that HB 661 was redefining "project." Sen. Keating mentioned that at the March 25, 1987, hearing the Water Development Board opposed HB 661. However, Rep. Spaeth explained that in the interim, all parties had come to an agreement and amendments had been made. Copies of the amendments were distributed to committee members, and Rep. Spaeth said the amendments had been approved by the Water Board, Department of Fish and Wildlife, as well as the Supervisors. (Exhibit 2) Rep. Spaeth recommended that the amendments be adopted and added that there was a need for a Statement of Intent (Exhibit 3) and a couple of technical amendments that are listed below.

1. Page 1, line 10
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS"
2. Page 1, line 10
Following: "75-7-103"
Insert: "AND 75-7-117"

Sen. Lynch moved the amendments, and motion CARRIED unanimously. Sen. Walker moved that the Statement of Intent DO PASS, and motion CARRIED unanimously.

Sen. Walker then moved that HB 661 AS AMENDED with the Statement of Intent BE CONCURRED IN. Motion CARRIED unanimously.

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PROPOSED AMENDMENTS TO HB 642

by

MONTANA WATER DEVELOPMENT ASSOCIATION

Third Reading Copy

SOURCE: NATURAL RESOURCES

EXHIBIT NO. 24

DATE: 8/12/07

BILL NO. 642

1. Page 2, line 24
Following: "APPROPRIATION"
Insert: "FROM THE SAME SOURCE"

TOTAL LOTS BY COUNTY FOR FY1994 THRU FY2005

GAD-Bayonne, N. J.

EXHIBIT

| PROPERTY NAME | TOTAL APPS FY90 | TOTAL LOTS FY91 | TOTAL APPS FY92 | TOTAL LOTS FY93 | TOTAL APPS FY94 | TOTAL LOTS FY95 | TOTAL APPS FY96 | TOTAL LOTS FY97 | TOTAL APPS FY98 | TOTAL LOTS FY99 | TOTAL APPS FY00 | TOTAL LOTS FY01 | TOTAL APPS FY02 | TOTAL APPS FY02 | TOTAL LOTS FY02 | | | | | | | | | | |
|---------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|--------------------|-----|-----|-----|------|-----|------|-----|------|-----|------|
| Verdehead | 15 | 21 | 25 | 13 | 45 | 17 | 27 | 10 | 79 | 20 | 60 | 17 | 95 | 14 | 51 | 11 | 78 | 15 | 31 | 21 | 34 | 14 | 63 | 12 | 17 |
| Horn | 8 | 11 | 14 | 4 | 12 | 2 | 3 | 7 | 39 | 1 | 5 | 7 | 43 | 2 | 2 | 8 | 11 | 5 | 7 | 3 | 5 | 5 | 18 | 1 | 1 |
| Redwater | 3 | 4 | 6 | 6 | 13 | 2 | 13 | 66 | 5 | 10 | 12 | 45 | 17 | 75 | 19 | 61 | 54 | 18 | 117 | 14 | 64 | 11 | 98 | 15 | 59 |
| Don | 20 | 33 | 28 | 54 | 78 | 39 | 73 | 23 | 56 | 38 | 159 | 34 | 151 | 65 | 462 | 31 | 59 | 36 | 71 | 35 | 107 | 30 | 53 | 25 | 63 |
| er | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 2 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| cade | 30 | 82 | 28 | 46 | 98 | 28 | 83 | 29 | 72 | 42 | 100 | 43 | 152 | 44 | 360 | 41 | 117 | 45 | 233 | 38 | 207 | 29 | 130 | 22 | 75 |
| reau | 0 | 0 | 3 | 8 | 2 | 3 | 3 | 0 | 0 | 2 | 2 | 0 | 5 | 1 | 5 | 3 | 7 | 1 | 2 | 1 | 1 | 2 | 3 | 1 | 7 |
| ter | 2 | 5 | 1 | 1 | 6 | 2 | 2 | 1 | 1 | 2 | 2 | 1 | 5 | 2 | 6 | 2 | 8 | 1 | 9 | 0 | 0 | 2 | 2 | 1 | 2 |
| fields | 0 | 0 | 1 | 3 | 3 | 0 | 0 | 1 | 1 | 2 | 2 | 1 | 2 | 0 | 0 | 3 | 10 | 1 | 1 | 0 | 0 | 4 | 8 | 0 | 0 |
| son | 2 | 2 | 0 | 0 | 4 | 4 | 8 | 5 | 9 | 5 | 5 | 0 | 0 | 1 | 2 | 6 | 19 | 6 | 14 | 1 | 2 | 2 | 4 | 1 | 2 |
| r Lodge | 7 | 28 | 6 | 7 | 5 | 6 | 8 | 9 | 17 | 9 | 22 | 8 | 43 | 10 | 24 | 11 | 44 | 8 | 83 | 15 | 46 | 3 | 13 | 4 | 8 |
| on | 0 | 0 | 1 | 0 | 0 | 1 | 1 | 0 | 0 | 1 | 1 | 3 | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 2 | 5 | 8 |
| us | 3 | 5 | 6 | 7 | 9 | 10 | 35 | 17 | 42 | 12 | 25 | 13 | 31 | 10 | 36 | 17 | 61 | 9 | 43 | 6 | 9 | 5 | 13 | 12 | 77 |
| head | 171 | 553 | 266 | 955 | 410 | 1393 | 395 | 130 | 1518 | 311 | 941 | 296 | 900 | 276 | 1028 | 246 | 615 | 258 | 731 | 261 | 1000 | 256 | 740 | 243 | 824 |
| latrin | 46 | 122 | 76 | 542 | 105 | 722 | 130 | 0 | 649 | 130 | 1074 | 101 | 1266 | 124 | 710 | 119 | 751 | 103 | 1271 | 119 | 636 | 105 | 1084 | 144 | 1286 |
| field | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 2 | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| er | 2 | 4 | 2 | 5 | 6 | 3 | 3 | 5 | 7 | 3 | 6 | 5 | 6 | 6 | 52 | 3 | 3 | 4 | 6 | 1 | 1 | 2 | 4 | 2 | 4 |
| den Valley | 1 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| ite | 5 | 7 | 12 | 9 | 17 | 0 | 0 | 5 | 35 | 7 | 12 | 14 | 54 | 17 | 80 | 8 | 26 | 7 | 23 | 9 | 51 | 6 | 13 | 9 | 22 |
| erson | 13 | 19 | 30 | 44 | 30 | 42 | 29 | 44 | 59 | 36 | 138 | 45 | 111 | 50 | 256 | 33 | 146 | 29 | 61 | 25 | 78 | 14 | 57 | 24 | 49 |
| th Basin | 4 | 11 | 0 | 0 | 0 | 0 | 0 | 0 | 4 | 0 | 0 | 0 | 0 | 1 | 1 | 2 | 2 | 2 | 2 | 1 | 2 | 0 | 0 | 2 | 3 |
| erson | 65 | 123 | 100 | 188 | 100 | 225 | 109 | 95 | 215 | 84 | 277 | 93 | 291 | 71 | 201 | 64 | 164 | 96 | 284 | 74 | 433 | 73 | 239 | 73 | 212 |
| is & Clark | 39 | 60 | 44 | 78 | 46 | 128 | 77 | 332 | 271 | 67 | 214 | 84 | 326 | 92 | 532 | 80 | 327 | 80 | 383 | 66 | 361 | 75 | 503 | 91 | 409 |
| arty | 3 | 3 | 0 | 3 | 8 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 2 | 2 | 2 | 2 | 1 | 2 | 0 | 0 | 0 | 0 | 0 | 0 |
| ohn | 44 | 151 | 66 | 47 | 128 | 67 | 190 | 95 | 207 | 124 | 424 | 121 | 337 | 102 | 335 | 121 | 339 | 105 | 285 | 73 | 157 | 77 | 189 | 62 | 150 |
| ison | 8 | 17 | 22 | 47 | 76 | 29 | 121 | 29 | 159 | 31 | 169 | 28 | 260 | 32 | 162 | 30 | 94 | 32 | 170 | 31 | 449 | 22 | 87 | 23 | 99 |
| one | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 2 | 2 | 2 | 2 | 3 | 29 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 |
| gher | 6 | 6 | 2 | 2 | 2 | 3 | 4 | 3 | 53 | 1 | 2 | 2 | 15 | 1 | 6 | 4 | 34 | 3 | 8 | 0 | 0 | 0 | 1 | 1 | 0 |
| eral | 9 | 20 | 10 | 14 | 21 | 13 | 110 | 11 | 53 | 24 | 98 | 19 | 254 | 27 | 134 | 20 | 68 | 11 | 31 | 15 | 76 | 6 | 27 | 13 | 50 |
| soula | 89 | 229 | 384 | 125 | 504 | 146 | 767 | 112 | 581 | 113 | 654 | 95 | 801 | 105 | 577 | 97 | 317 | 115 | 544 | 72 | 311 | 95 | 281 | 91 | 247 |
| selshell | 0 | 0 | 0 | 0 | 0 | 1 | 2 | 0 | 0 | 2 | 2 | 2 | 4 | 2 | 3 | 3 | 4 | 2 | 30 | 0 | 0 | 0 | 0 | 0 | 6 |
| oleum | 22 | 37 | 55 | 19 | 34 | 42 | 200 | 19 | 159 | 27 | 124 | 36 | 458 | 29 | 92 | 41 | 115 | 38 | 112 | 22 | 62 | 26 | 71 | 31 | 77 |
| oleum | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 27 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| lips | 0 | 10 | 2 | 2 | 1 | 6 | 5 | 49 | 2 | 4 | 12 | 1 | 4 | 2 | 3 | 0 | 0 | 2 | 6 | 1 | 1 | 1 | 2 | 4 | 0 |
| dera | 0 | 0 | 2 | 3 | 3 | 1 | 2 | 3 | 3 | 2 | 2 | 1 | 1 | 1 | 6 | 1 | 1 | 2 | 2 | 1 | 1 | 1 | 1 | 2 | 1 |
| der River | 0 | 0 | 1 | 4 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 5 | 1 | 0 | 0 | 2 | 2 | 0 | 0 |
| well | 5 | 5 | 3 | 4 | 4 | 5 | 6 | 5 | 6 | 11 | 27 | 3 | 5 | 4 | 8 | 18 | 80 | 122 | 20 | 7 | 6 | 6 | 8 | 2 | 2 |
| rie | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| alli | 88 | 164 | 201 | 109 | 329 | 155 | 460 | 166 | 539 | 138 | 510 | 170 | 533 | 190 | 483 | 126 | 416 | 8 | 314 | 133 | 283 | 140 | 386 | 135 | 354 |
| land | 7 | 9 | 10 | 15 | 4 | 11 | 7 | 11 | 4 | 6 | 8 | 4 | 7 | 2 | 2 | 3 | 3 | 54 | 100 | 6 | 8 | 2 | 5 | 4 | 4 |
| sevelt | 2 | 2 | 0 | 1 | 1 | 1 | 6 | 1 | 1 | 1 | 2 | 2 | 0 | 4 | 4 | 0 | 0 | 0 | 0 | 0 | 1 | 1 | 0 | 1 | 1 |
| ebud | 1 | 4 | 1 | 3 | 4 | 1 | 1 | 1 | 1 | 0 | 0 | 1 | 1 | 1 | 1 | 2 | 2 | 19 | 1 | 4 | 46 | 1 | 1 | 1 | 3 |
| ers | 28 | 37 | 35 | 54 | 26 | 49 | 53 | 192 | 132 | 40 | 187 | 57 | 206 | 70 | 195 | 54 | 151 | 54 | 155 | 40 | 116 | 22 | 59 | 35 | 56 |
| ndan | 2 | 4 | 4 | 11 | 8 | 20 | 1 | 3 | 29 | 5 | 7 | 7 | 10 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 1 | 4 | 3 | 2 | 2 |
| erBow | 27 | 72 | 24 | 66 | 12 | 41 | 16 | 48 | 57 | 23 | 52 | 19 | 167 | 20 | 147 | 30 | 130 | 19 | 42 | 13 | 96 | 7 | 12 | 11 | 21 |
| water | 11 | 14 | 19 | 13 | 23 | 11 | 20 | 21 | 39 | 16 | 76 | 13 | 108 | 17 | 111 | 23 | 47 | 24 | 65 | 25 | 91 | 16 | 105 | 20 | 78 |
| etgrass | 3 | 4 | 3 | 4 | 7 | 5 | 6 | 6 | 9 | 3 | 7 | 6 | 35 | 3 | 51 | 8 | 11 | 4 | 17 | 4 | 10 | 7 | 9 | 11 | 140 |
| on | 10 | 13 | 29 | 8 | 15 | 3 | 3 | 3 | 6 | 5 | 16 | 9 | 15 | 7 | 8 | 9 | 23 | 5 | 16 | 2 | 3 | 6 | 6 | 9 | 13 |
| le | 2 | 2 | 1 | 2 | 2 | 10 | 3 | 13 | 2 | 6 | 7 | 1 | 3 | 3 | 5 | 2 | 3 | 0 | 0 | 0 | 4 | 9 | 1 | 1 | 0 |
| asure | 1 | 1 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| ey | 1 | 5 | 2 | 0 | 0 | 1 | 1 | 0 | 0 | 0 | 3 | 4 | 2 | 1 | 2 | 4 | 31 | 3 | 39 | 2 | 4 | 1 | 8 | 5 | 156 |

EXHIBIT

D

| CNTY_NAME | TOTAL APPS FY05 | TOTAL LOTS FY05 | Individual Wells | Individual Cisterns | Multi User Water System | New Public Water System | Connections or Extentions to City | Total |
|---------------|-----------------------|-----------------------|---------------------|------------------------|-------------------------------|----------------------------|---|-------|
| Choteau | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Fergus | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Golden Valley | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Judith Basin | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Liberty | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Petroleum | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Pondera | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Toole | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Treasure | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wheatland | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Wibaux | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Blaine | 1 | 1 | 0 | 0 | 0 | 0 | 1 | 1 |
| Daniels | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 1 |
| Dawson | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 1 |
| Garfield | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 1 |
| Musselshell | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 1 |
| Powder River | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 1 |
| Roosevelt | 1 | 1 | 1 | 0 | 0 | 0 | 0 | 1 |
| McCone | 1 | 2 | 0 | 0 | 0 | 0 | 2 | 2 |
| Fallon | 2 | 2 | 1 | 0 | 0 | 0 | 1 | 2 |
| Rosebud | 2 | 2 | 2 | 0 | 0 | 0 | 0 | 2 |
| Sheridan | 2 | 2 | 1 | 0 | 0 | 0 | 1 | 2 |
| Richland | 3 | 2 | 2 | 0 | 0 | 0 | 0 | 2 |
| Meagher | 2 | 3 | 3 | 0 | 0 | 0 | 0 | 3 |
| Prairie | 2 | 4 | 4 | 0 | 0 | 0 | 0 | 4 |
| Custer | 4 | 4 | 4 | 0 | 0 | 0 | 0 | 4 |
| Valley | 3 | 5 | 5 | 0 | 0 | 0 | 0 | 5 |
| Teton | 5 | 5 | 5 | 0 | 0 | 0 | 0 | 5 |
| Glacier | 2 | 6 | 6 | 0 | 0 | 0 | 0 | 6 |
| Powell | 2 | 6 | 6 | 0 | 0 | 0 | 0 | 6 |
| Phillips | 3 | 9 | 7 | 0 | 0 | 0 | 2 | 9 |
| Hill | 6 | 12 | 8 | 0 | 0 | 0 | 2 | 10 |
| Sweetgrass | 9 | 17 | 17 | 0 | 0 | 0 | 0 | 17 |
| Beaverhead | 9 | 18 | 18 | 0 | 0 | 0 | 0 | 18 |
| Carter | 1 | 23 | 23 | 0 | 0 | 0 | 0 | 23 |
| Big Horn | 3 | 28 | 2 | 0 | 0 | 0 | 26 | 28 |
| Carbon | 25 | 41 | 27 | 10 | 0 | 0 | 4 | 41 |
| Stillwater | 18 | 43 | 42 | 0 | 0 | 0 | 1 | 43 |
| Mineral | 20 | 48 | 33 | 0 | 0 | 0 | 12 | 45 |
| Deer Lodge | 14 | 78 | 71 | 0 | 1 | 0 | 0 | 72 |
| Park | 23 | 80 | 78 | 2 | 0 | 0 | 0 | 80 |
| Granite | 14 | 114 | 114 | 0 | 0 | 0 | 0 | 114 |
| Jefferson | 29 | 118 | 116 | 0 | 0 | 0 | 2 | 118 |
| Silver Bow | 16 | 127 | 127 | 0 | 0 | 0 | 0 | 127 |
| Cascade | 31 | 133 | 92 | 0 | 1 | 0 | 36 | 129 |
| Sanders | 54 | 185 | 123 | 0 | 2 | 1 | 34 | 160 |
| Lake | 96 | 222 | 152 | 0 | 3 | 0 | 8 | 163 |
| Broadwater | 27 | 228 | 227 | 1 | 0 | 0 | 0 | 228 |
| Lincoln | 88 | 230 | 180 | 0 | 1 | 0 | 6 | 187 |
| Lewis & Clark | 67 | 280 | 196 | 0 | 2 | 0 | 57 | 255 |

| | | | | | | | | |
|-------------|------|------|------|----|----|---|------|------|
| Madison | 52 | 448 | 166 | 0 | 0 | 2 | 80 | 248 |
| Missoula | 132 | 589 | 310 | 0 | 6 | 1 | 62 | 379 |
| Yellowstone | 79 | 672 | 449 | 0 | 0 | 0 | 317 | 766 |
| Ravalli | 174 | 766 | 692 | 0 | 3 | 0 | 1 | 696 |
| Gallatin | 155 | 923 | 191 | 0 | 1 | 0 | 233 | 425 |
| Flathead | 404 | 1594 | 692 | 0 | 6 | 2 | 533 | 1233 |
| Totals | 1586 | 7076 | 4198 | 13 | 26 | 6 | 1421 | 5664 |

G/PWSB/SUDIV/R
 EPORTS/Typeofw
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